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10/529,265

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Xavier Blin

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FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
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EXAMINER

CHANNAVAJJALA, LAKSHMI SARADA

ART UNIT

PAPER NUMBER

1611

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/529,265	Applicant(s) BLIN ET AL.	
	Examiner Lakshmi S. Channavajjala	Art Unit 1611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 27 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 108-112,115,116,119-168 and 170-220 is/are pending in the application.
- 4a) Of the above claim(s) 169,182,188-190 and 193-195 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 6,11,108-112,115,119-168,170-181,187,191,192 and 196-220 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/11/06;1/9/08;8/27/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of amendment and response to election requirement dated 8-27-09 and IDS dated 5-11-06, 1-9-08 and 8-27-09 is acknowledged.

Claims 1-107, 113, 114, 117, 118, and 169 have been cancelled. 108-112, 115-116, 119-168 and 170-220 are pending.

Election/Restrictions

1. Applicants election of the following species with traverse, in the reply filed on 8-27-09 is acknowledged:

(A) a copolymer of isobornyl methacrylate/acrylic acid/isobutyl acrylate, wherein one block comprises isobornyl methacrylate/acrylic acid, and the other block comprises isobutyl acrylate. Isobornyl methacrylate is believed, if polymerized, would yield a homopolymer with Tg of 110 °C, acrylic acid, with Tg of 105 °C, and isobutyl acrylate, with Tg of -24 °C. Claims 108-112, 115, 116, 119-140, 159-168, and 170-220 are believed to encompass this elected species, and

(B) a film-forming polymer of vinyl pyrrolidone/hexadecane. Claims 108-112, 115, 116, 119-168, 170-181, 187, 191, 192, and 196-220 are believed to encompass this elected species.

2. The traversal is on the ground(s) that the current claims, as amended, share at least one special common structure, for example, the block polymer as recited in the claims, as amended, which is both novel and unobvious over prior art. As such, this election of species requirement is improper and should be withdrawn.

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3. This is not found persuasive because the claimed block polymers encompass several combinations of monomers that constitute the film-forming ethylenic based on the different glass transition temperatures of the monomer blocks, polydispersity, molecular weight etc. This is evident from the multitudes of monomers that constitute each of the A and B components and further the intermediate segment of the claimed block polymers, which in turn may have one or more constituent monomers of the first and second blocks. Thus, depending on the number of constituents of first and second block, the intermediate segment varies that results in different molecular weight, polydispersity and Tg. Applicants merely argue that there is a common technical feature without any evidence that the each of the resulting polymers from the claimed broad genus are similar and hence obvious over each other. Examiner's position that the claimed polymers encompass a huge genus is evident from the instant specification where at the least the block copolymer isobornyl acrylate/isobutyl 5 methacrylate/2-ethylhexyl acrylate is different from the block copolymer isobornyl acrylate/methyl acrylate/acrylic acid copolymer. Further, the claimed genus of second polymer includes a number of different polymers that are not similar and hence do not share the same technical feature and thus do not constitute obvious variants.

The requirement is still deemed proper and is therefore made FINAL.

Based on the election of the above components A and B, claims 108-112, 115, 116, 119-168, 170-181, 187, 191, 192, and 196-220 have been examined. Accordingly, claims 169, 182, 188-190, 193-195 have been withdrawn.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 108-112, 115, 116, 119-168, 170-181, 187, 191, 192, and 196-220 were provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 77-80, 83-94, 97-107, and 109-161 of copending Application No. 10/529,266 or claims 80-83, 86, 87, 90-140, and 142-165 of copending Application No. 10/529,218, claims 65-136 of copending Application No. 10/529,698 and claims 87-177 of copending Application No. 10/529,267 each in view of US 6153206.

6. Instant claims as well as the claims of the above copending application are drawn to cosmetic compositions comprising film-forming linear ethylenic block polymers at least one film-forming linear ethylenic block polymer, wherein the at least one film-forming ethylenic linear block polymer has a polydispersity index of greater than or equal to 2.5 and comprises at least one first block and at least one second block of

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different glass transition temperatures (T_g), wherein the at least one first and at least one second blocks are linked together via an intermediate segment comprising at least one constituent monomer of the at least one first block and at least one constituent monomer of the at least one second block, wherein the at least one constituent monomer of the at least one first block differs from the at least one constituent monomer of the at least one second block, the intermediate segment is a random copolymer block, and the at least one first block of the polymer is chosen from: a) a block with a T_g of greater than or equal to 40 °C, b) a block with a T_g of less than or equal to 20 °C, c) a block with a T_g of between 20 and 40 °C, and the at least one second block is chosen from a category a), b) or c) different from the at least one first block. The scope of the polymers that result from the above combination of the various blocks, based on their T_g , polydispersity and molecular weights in each of the above depending applications is similar to the instant claims. For instance, claims 106 ad 124 of '267 application and claims 117 and 122 of '266 application recite the same monomers that make up the block copolymers.

7. US 206 patent to Anton discloses cosmetic compositions comprising a non-elastomeric film-forming synthetic ethylenic block polymer in a cosmetically acceptable liquid medium (e.g. an oil) (abstract; col. 2, lines 9-23 and 56; col. 6, lines 7-10; claim 1). Anton teaches that the polymer of the invention comprises portions having a low glass transition temperature (T_g) and portions having a high T_g and teaches that one block is preferably constructed from isobornyl methacrylate (elected species) (col. 4, lines 5-27; Example 1). This block has a glass transition temperature, T_g of 76-120 °C. Anton also

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teaches that a second block of the polymer is constructed from monomers, which when polymerized have a glass transition temperature, T_g of -10 to 75 °C (abstract). Anton teaches that the oil component is a volatile or nonvolatile oil (i.e. an organic liquid medium) (col. 6, lines 8-10 and 17-19). Anton teaches that the compositions are useful as shiny, transfer resistant cosmetics (col. 1, lines 60-67; Example 1). Anton further teaches that the polymer of the invention may be a copolymer, a terpolymer (i.e. a polymer of three different monomers), or have any number of different units in addition to the first and second repeat units (col. 2, lines 58-62; col. 4, lines 28-60). In particular, Anton teaches block terpolymers and teaches that the repeating units are monomer units which are present more than one time in the polymer chain and can be present in either repetitive sequence or in random sequence with other monomer units (col. 3, lines 21-24). Anton presents a number of suitable polymer architectures (table in col. 4). Anton also emphasizes the importance of having "hard" and "soft" portions (i.e. portions having different glass transition temperatures, T_g) in the polymer to maintain both flexibility and shine of the composition (col. 2, lines 51-58).

8. Anton further teaches including shine enhancing agents such as vinylpyrrolidone/hexadecene copolymers (col. 10, L 28-68) for imparting shine to the composition. Anton teaches the copolymers in an amount of 5%-50%. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to employ the combination of the instant ethylenic linear block copolymers and the shine imparting copolymers such as vinylpyrrolidone/hexadecene copolymers of Anton in a cosmetic composition with an expectation that the combination

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imparts transfer resistance (see col. 1, L 65-68 of Anton) and also imparts shine to the composition.

This is a provisional obviousness-type double patenting rejection.

Claims 108-112, 115, 116, 119-168, 170-181, 187, 191, 192, and 196-220 directed to an invention not patentably distinct from claims 77-80, 83-94, 97-107, and 109-161 of copending Application No. 10/529,266 or claims 80-83, 86, 87, 90-140, and 142-165 of copending Application No. 10/529,218, claims 65-136 of copending Application No. 10/529,698 and claims 87-177 of copending Application No. 10/529,267, which are commonly assigned. Specifically, see the above explanation.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned copending applications stated above, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon

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the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 108-112, 115, 116, 119-168, 170-181, 187, 191, 192, and 196-220 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 2002/0115780 to Mougin in view of U.S. 6,663,855 to Frechet, U.S. 6,531,535 to Melchior and US 6,153,206 to Anton et al.

Alternatively,

Claims 108-112, 115, 116, 119-168, 170-181, 187, 191, 192, and 196-220 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,153,206 to Anton et al. in view of U.S. 2002/0115780 to Mougin, U.S. 6,663,855 to Frechet and U.S. 6,531,535 to Melchior

Mougin discloses cosmetic compositions comprising film-forming block ethylenic copolymers comprising at least one rigid block having a glass transition temperature (T_g) greater than or equal to 20°C and at least one flexible block having a T_g of less than

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20°C (abstract; claim 1). Mougin teaches that each block consists of one or more different monomer and may be a random copolymer (paragraph [0038]). These copolymers are present in a cosmetically acceptable organic liquid medium (e.g. an oil) (paragraphs [0099] and [0100]) and are useful in a variety of cosmetic compositions (paragraph [0130] and [0131]). Mougin teaches that these polymers increase the staying power of make-up compositions including those for keratin materials (paragraphs [0007] and [0012]) and produce cosmetics that remain glossy and do not wear (Example 4). Furthermore, Mougin teaches monomers for use in the blocks of the copolymer that are substantially identical to those claimed in the instant application (paragraphs [0047]-[0097]). For example, Mougin explicitly teaches the use of isobutyl acrylate (elected species) (paragraph [0084]) and allows for C1-20 alkyl (meth)acrylates containing a linear, branched, or cyclic chain (paragraphs [0070] and [0084]) (which would encompass applicants' elected species of isobornyl (meth)acrylate). Mougin teaches that for one example of such a polymer, the number average molar mass is 51,900 and the weight-average molar mass is 114,500 (paragraph [0143]).

Frechet discloses cosmetic compositions comprising linear block copolymers formed by a core polymer surrounded by two or more flanking polymers (abstract; col. 3, lines 52-57). Frechet teaches that the flanking polymers may be different from each other in terms of their composition and/or molecular weight (col. 6, lines 35-37) and teaches that the core and flanking polymers may comprise different monomers or may have one or more monomers in common (col. 6, lines 54-56). Frechet teaches that the T_g value of the core polymer is -200-150 °C (most preferably from -75-50 °C) and is

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different from that of the flanking polymers, which typically have T_g values of 0-300 °C (more preferably from 30-150 °C (col. 4, lines 21-36). In line with the teachings of Mougin, Frechet teaches the importance of the polymers having both hard and soft blocks (i.e. high and a low T_g portions) (col. 4, lines 33-36). Frechet teaches that one or more blocks can be random copolymer blocks and the overall polymer may have a variety of architectures such as A-R-B-A or A-R-B-R-A, where R is a random block of monomers A and B or of monomers B and C or more monomers. Moreover, the random block can vary in composition or size with respect to the overall block copolymer (col. 10, lines 25-44).

Neither Mougin nor Frechet disclose the optimal polydispersity range of their polymers. It is the examiner's position that it would have been obvious and fully within the purview of one having ordinary skill in the art to control the optimum molecular weight, polydispersity, polymer composition and architectures of the resultant block copolymer product by varying experimental parameters such as source, amount, and solvation of catalyst/initiators/control agents, polymerization temperature and time, etc., as known in the art and taught by the references referred to by Mougin (paragraphs [0020]-[0028]). Nonetheless, one would have looked to the art to ascertain an acceptable polydispersity range for the polymers. Melchioris discloses copolymer compositions with the object of providing coating compositions with high resistance to solvents, water, and environmental influences with very good optical properties (gloss) and mechanical properties (hardness, flexibility), which can be applied in a wide range

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of fields (paragraphs [0013], and [0037]). Melchior teaches that polydispersity values of 2.9-3.5 are acceptable to achieve the objects of the invention Table 1.

Frechet teaches that it is known in the art that the selection of macromers with different physical and chemical properties such as solubility and T_g value is a means to select the desired overall polymer properties (col. 1, lines 25-33). Frechet further teaches that block copolymers are advantageous over graft copolymers since the polymer architecture can be controlled more readily, and that this is particularly important when designing polymers with segments of distinct physical and chemical properties for particular applications (col. 1, lines 48-54). Frechet teaches that the polymers can be readily tailored to a particular application by changing the chemical composition (e.g. the types of monomers and their proportions) to optimize the physical properties such as solubility and T_g value (col. 2, lines 44-49; col. 6, lines 13-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to prepare a polymer arranged with a first block and a second block connected by an intermediate block comprising a random copolymeric block having both types of monomers, to provide a suitable polymer compound in Mougin's invention. One would have been motivated to do so since the teaching of Mougin suggests such an arrangement, and since one of ordinary skill in the art would recognize that including a block comprising monomers from the "hard" and "soft" portions provides an additional means (besides the weight % of each block) to manipulate the overall properties of the polymer, as taught by Frechet. Further, it is well within the skill of ordinary artisan to select the appropriate properties of a copolymer for

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a given formulation. Therefore if an artisan wanted to produce a polymer with both high flexibility and shine qualities, one would have been motivated to arrange the "hard" and "soft" polymer blocks such that they were connected by an intermediate block as suggested by Mougín and taught by Frechet.

While instant claims recite an additional film former, in particular, the claimed vinylpyrrolidone/hexadecene copolymer as an additional film-former, the above references of Mougín, Frechet and Melchior are silent regarding the same. However, all of the above references as well as the instant claims are directed to cosmetic compositions useful for application to keratin materials.

US 206 patent to Anton discloses cosmetic compositions comprising a non-elastomeric film-forming synthetic ethylenic block polymer in a cosmetically acceptable liquid medium (e.g. an oil) (abstract; col. 2, lines 9-23 and 56; col. 6, lines 7-10; claim 1). Anton teaches that the polymer of the invention comprises portions having a low glass transition temperature (T_g) and portions having a high T_g and teaches that one block is preferably constructed from isobornyl methacrylate (elected species) (col. 4, lines 5-27; Example 1). This block has a glass transition temperature, T_g of 76-120 °C. Anton also teaches that a second block of the polymer is constructed from monomers, which when polymerized have a glass transition temperature, T_g of -10 to 75 °C (abstract). Anton teaches that the oil component is a volatile or nonvolatile oil (i.e. an organic liquid medium) (col. 6, lines 8-10 and 17-19). Anton teaches that the compositions are useful as shiny, transfer resistant cosmetics (col. 1, lines 60-67; Example 1). Anton further teaches that the polymer of the invention may be a copolymer, a terpolymer (i.e. a

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polymer of three different monomers), or have any number of different units in addition to the first and second repeat units (col. 2, lines 58-62; col. 4, lines 28-60). In particular, Anton teaches block terpolymers and teaches that the repeating units are monomer units which are present more than one time in the polymer chain and can be present in either repetitive sequence or in random sequence with other monomer units (col. 3, lines 21-24). Anton presents a number of suitable polymer architectures (table in col. 4). Anton also emphasizes the importance of having "hard" and "soft" portions (i.e. portions having different glass transition temperatures, T_g) in the polymer to maintain both flexibility and shine of the composition (col. 2, lines 51-58). Anton further teaches including shine enhancing agents such as vinylpyrrolidone/hexadecene copolymers (col. 10, L 28-68) for imparting shine to the composition. Anton teaches the copolymers in an amount of 5%-50%. Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention was made to prepare a polymer arranged with a first block and a second block connected by an intermediate block comprising a random copolymeric block having both types of monomers, to provide a suitable polymer compound of Mougin and include the shine imparting copolymers such as vinylpyrrolidone/hexadecene copolymers of Anton in a cosmetic composition with an expectation that the combination imparts transfer resistance (see col. 1, L 65-68 of Anton) and also imparts shine to the composition.

Alternatively, Anton (discussed above) teaches transfer resistant lipsticks (Example 1) and, in combination with Frechet, teaches the use of the same monomer

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components of the block polymers as those instantly claimed. Thus, the compositions of Anton are non-elastomeric. Anton teaches that the molecular weight average of the polymer is from 5,000 to 300,000, but is preferably from 5,000 to 50,000 (col. 5, lines 23-28). Anton exemplifies a composition comprising a polymer having a molecular weight of 27,100 (Example 1). Anton teaches that the preferred compositions comprise from 3-30% of the copolymer (col. 11, line 10), and embodies the copolymer in the range of 19-20% by weight of the composition (Example 1). As discussed above, Anton teaches that the oil component is a volatile or nonvolatile oil and exemplifies 6% isododecane in the transfer resistant lipstick composition (Example 1). Anton also teaches that the nonvolatile oil may be a hydrocarbon-based oil (col. 7, lines 44-45) or nonvolatile silicone oil (col. 7, line 54-67). Anton exemplifies 8% of the nonvolatile oil fluoro octyldodecyl meadowfoamate (Example 1). Anton teaches that the preferred compositions of the invention comprise 1-30% of a wax (col. 9, lines 41-49; col. 11, lines 8-21), and exemplifies a composition comprising 7% synthetic wax (Example 1).

Neither Anton nor Frechet discloses the polydispersity of their polymers. It is the examiner's position that it would have been obvious and fully within the purview of one having ordinary skill in the art to control the optimum molecular weight, polydispersity, polymer composition and architectures of the resultant block copolymer product by varying experimental parameters such as source, amount, and solvation of catalyst/initiators/control agents, polymerization temperature and time, etc., as taught by the references referred to by Anton (col. 5, line 64 to col. 6, line 6). Nonetheless, one would have looked to the art to ascertain an acceptable polydispersity value for the

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polymers. Melchior discloses copolymer compositions with the object of providing coating compositions with high resistance to solvents, water, and environmental influences with very good optical properties (gloss) and mechanical properties (hardness, flexibility), which can be applied in a wide range of fields (paragraphs [0013], and [0037]). Melchior teaches that polydispersity values of 2.9-3.5 are acceptable to achieve the objects of the invention Table 1.

Frechet teaches that it is known in the art that the selection of macromers with different physical and chemical properties such as solubility and T_g value is a means to select the desired overall polymer properties (col. 1, lines 25-33). Frechet further teaches that block copolymers are advantageous over graft copolymers since the polymer architecture can be controlled more readily, and that this is particularly important when designing polymers with segments of distinct physical and chemical properties for particular applications (col. 1, lines 48-54). Frechet teaches that the polymers can be readily tailored to a particular application by changing the chemical composition (e.g. the types of monomers and their proportions) to optimize the physical properties such as solubility and T_g value (col. 2, lines 44-49; col. 6, lines 13-27).

Thus, it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to prepare a polymer arranged with a first block and a second block connected by an intermediate block comprising both types of monomers, to provide a suitable polymer compound. One would have been motivated to do so since the teaching of Anton allows for and suggests such an arrangement, and since one of ordinary skill in the art would recognize that including a block comprising monomers

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from the "hard" and "soft" portions provides an additional means (besides the weight % of each block) to manipulate the overall properties of the polymer, as taught by Frechet. Further, it is well within the skill of ordinary artisan to select the appropriate properties of a copolymer for a given formulation. Therefore if an artisan wanted to produce a polymer with both high flexibility and shine qualities, one would have been motivated to arrange the "hard" and "soft" polymer blocks such that they were connected by an intermediate block as suggested by Anton and taught by Frechet. Further, it would have been *prima facie* obvious to one of ordinary skill in the art at the time of the invention to formulate a polymer with a core and flanking blocks having different compositions and T_g values as taught by Frechet, to provide a transfer resistant makeup composition using isobornyl methacrylate as a preferred monomer as taught by Anton and isobutyl acrylate as a preferred monomer as taught by Frechet and to formulate the polymer with a polydispersity of 2.9-3.5 as taught by Melchior. One would have had a high expectation of success given that each of the references is concerned with similar problems in the art, namely providing compositions with desirable cosmetic properties. The skilled artisan, in possession of Anton, Frechet, and Melchior could have arrived at the instantly claimed invention by no more than routine experimentation. Furthermore, the MPEP states that the selection of known materials based on their suitability for their intended uses is *prima facie* obvious. "Reading a list and selecting a known compound to meet known requirements is no more ingenious than selecting the last piece to put in the last opening in a jig-saw puzzle." 325 U.S. at 335, 65 USPQ at 301. See MPEP § 2144.07. In the instant case, applicants are claiming a combination of known

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monomers, all of which are taught by Anton and Frechet, for the same purpose as that which has been taught in the art. Furthermore, since Anton teaches block terpolymers and teaches various configurations of the blocks in the polymers (col. 3, lines 21-24; table in col. 4) including homopolymeric and random copolymer blocks (col. 4, lines 28-60), it would have been obvious to an ordinary artisan to produce a polymer having homopolymeric blocks of any of the monomers taught by Anton or Frechet in any of the configurations taught by Anton or Frechet.

While Anton does not readily envisage the combination of the linear ethylenic block polymers and the shine enhancing vinylpyrrolidone/hexadecene polymer, it would have been within the purview of a skilled artisan to employ them together in a single embodiment of cosmetic composition with an expectation to obtain transfer resistance as well as enhanced shine upon application to keratin materials such as nails.

Information Disclosure Statement

10. The information disclosure statement (IDS) submitted on 5-11-06; 1-9-08 and 8-27-09 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S. Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -5.30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila G. Landau can be reached on 571-272-0614. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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